IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7542 OF 2004

Anand Park Residents Association ....Petitioner
V/s.
Bipinchand S. Sangavi & Ors. ....Respondents

Mr.M.J. Jamdar for the Petitioner.

Mr.N. Pungalia for Respondent No.2.

CORAM : R.M. SAVANT, J.
DATED : 21ST MARCH, 2007.

P.C. :

1. Rule. By consent the Rule is made returnable forthwith and heard.

2. By this Petition under Article 227 of the Constitution of India, the Petitioner impugns the order dated 28.4.2004 passed in the Misc. Civil Appeal No.235 of 2003 by the learned 8th Additional District Judge, Pune. By the said order,the Appeal filed by the Petitioner against the order dated 24.7.2001, passed by the learned Civil Judge, Junior Division, Pune for restoration of the suit being R.C.S. No.37 of 1995 came to be rejected.

3. Such of the facts which are necessary cited

are stated thus :-

4. The Petitioner is the original Plaintiff in R.C.S. No.37 of 1995. The said suit was field by the Petitioner inter-alia seeking declaration and permanent injunction against the Respondents herein, who according to the Petitioner were obstructing the user for recreational purposes, games and cultural programmes of an open space in the lay out of Anand Park Colony situated in Survey Nos.129 and 130, Hissa Nos.1 and 2 of Aundh, Pune.

5. It appears that in the said suit, an application came to be filed by the Respondents herein being Exhibit-38, challenging the valuation of the said suit. The Petitioner-Plaintiff also filed an application being Exhibit-39, seeking permission to treat the said suit as a representative suit under the provisions of Order 1 Rule 8 of C.P.C. It appears that the said applications Exhibits-38 and 39 were heard by the learned Judge and the said applications were adjourned for passing orders. However, it is the case of the Petitioner that the suit itself was placed for final hearing on account of the mistake in the Roznama. In view of the fact that the Petitioner was not aware of the mistake in the Roznama, the

Petitioner was awaiting the orders to be pronounced on Exhibits-38 and 39. However, in view of recording in the Roznama, the suit was placed for final hearing and came to be dismissed on 22.12.1999.

6. On such dismissal of the said suit for default, the Petitioner moved an application being Misc. Application No.145 of 2000 in the Court of the learned Civil Judge, Junior Division, Pune, trying the matters concerning the Pune Municipal Corporation suits for restoration of the said R.C.S. No.37 of 1995 by setting aside the above dismissal order dated 22.12.1999. The Petitioner also led evidence of one Achyut Date on their behalf. The said application was considered by the learned Civil Judge Junior Division, who passed an order on 24.7.2001 rejecting the said application. Thereafter the Misc. Civil Appeal filed by the Petitioner came to be dismissed by the impugned order dated 28.4.2004.

7. I have heard the learned counsel for the Petitioner and the learned counsel for Respondent No.2. On behalf of the Petitioner Mr.Jamdar the learned counsel submits that in view of the fact that the Petitioner was labouring under the impression that the orders on Exhibits-38 and 39 were to be

pronounced, the Petitioner was in dark about the suit being kept for final hearing. Only after the suit came to be dismissed for default that the Petitioner became aware about the mistake committed in the Roznama. The learned counsel for the Petitioner further submitted that the absence of the Petitioner on the said date when the suit was dismissed for default, was therefore, not out of negligence or wilful.

8. On the other hand, the leaned counsel for the Respondent opposes the prayer of the Petitioner and contends that the Petitioner ought to have taken notice of the said suit and ought to have remained present on the said date when the suit came to be dismissed. It is the contention of the learned counsel for the Respondent that no sufficient cause has been made out by the Petitioner for restoration of the said suit.

9. I have given my anxious consideration to the rival submissions. It is significant to note that the said two applications being Exhibits-38 and 39 were heard and were kept for orders. The explanation of the Petitioner that on account of the fact that it was under the impression that the order on the said

applications was to be pronounced and therefore, it did not remain present on the said date is a plausible explanation of the Petitioner. The contention of the Petitioner that the said Exhibits-38 and 39 were kept and heard finally has also not been controverted by the Respondent.

10. In that view of the matter, the interest of justice would be served if both the orders i.e. the order dated 24.7.2001 passed by the learned Civil Judge, Junior Division, Pune in Misc.Application No.145 of 2000 in R.C.S. No.37 of 1995 as well as the order dated 28.4.2004 dismissing the Misc. Application filed by the Petitioner is set aside and the suit is restored to file. The interest of justice would also be served if the Petitioner is directed to pay the costs of Rs.2000/- to the Respondent within a period of four weeks from today. The said cost to be paid as a condition precedent and the trial Court to restore the said suit after the Petitioner produces a receipt evidencing such payment of cost.

11. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

(R.M. SAVANT, J.)